

Section 20 - Contents

Contract Administration

<u>Sub-Section/Subject</u>	<u>Page</u>	<u>Revision Date</u>
.100 Responsibility for Contract Administration	20-1	2002
.110 Importance of Contract Administration	20-1	
.120 Designation of a Contract Administrator	20-1	
.200 Conformance to Contract Requirements	20-2	2002
.210 New, Used or Altered Materials	20-2	
.220 Packaging	20-2	
.230 Substitutions	20-2	
.240 Overshipments and Undershipments	20-3	
.250 Loss or Damage in Transit	20-3	
.300 Handling Default	20-4	2002
.400 Modification of Contract	20-6	2002
.500 Prompt Payment	20-6	2002
.510 Requirement	20-6	
.520 Finance Charge	20-7	
.530 Payment to Subcontractors	20-7	
.600 Debarment	20-8	2002
.700 Equipment Maintenance	20-10	2002

Section 20

Contract Administration

Sub-Section 20.100 – Responsibility for Contract Administration

Subject 20.110 – Importance of Contract Administration

The procurement process does not end when the purchase order or contract is issued. Contract administration is an important part of the process because, if the desired product or service is not received or does not function as required, the process has failed. The integrity of the procurement system requires that goods and services be provided, received, invoiced and paid in the manner prescribed in the contract. Program managers must be cautioned to keep the person who has performed the procurement function informed of any problems or potential problems regarding any contract or purchase order so action may be taken to correct problems before they become critical.

Subject 20.120 – Designation of a Contract Administrator

Most purchases are administered by the Contract/Purchase Officer who made the procurement. He/she is the one who receives complaints, answers questions, follows up on or expedites performance and thus is the Contract Administrator, as well as the Contract/Purchase Officer. For large, complex and/or critical procurements, however, it may be necessary for the Contract/Purchase Officer to appoint a responsible person in the work area that is to receive the goods or services to serve as Contract Administrator. This appointment must be in writing and must include the specific duties that the Contract Administrator is to perform as well as any limitations on his/her authority. For example, it should be made clear that the Contract Administrator cannot negotiate any changes in the contract. (See Appendix M-5 for a sample "Assignment of Contract Administrator" letter.)

Sub-Section 20.200 - Conformance to Contract Requirements

A vendor is in default whenever he/she fails to perform in accordance with the provision of the contract; however, the following are a few specific areas of concern (especially in the purchase of goods) that require special attention.

Subject 20.210 - New, Used or Altered Materials

Purchases of used or altered equipment and/or supplies may be negotiated (see Section 10.400 of this Manual); however, unless the CSB specifically requests used or altered items, it should insist that all supplies and equipment furnished by a vendor should be new and in first class condition (see the General Terms and Conditions in the model IFB in Appendix C).

Subject 20.220 - Packaging

Unless otherwise specified in the solicitation, the CSB should insist on new standard commercial packing and shipping containers with the commodity description legibly marked or labeled on the outside (see the General Terms and Conditions in the model IFB in Appendix C).

Subject 20.230 - Substitutions

Substitution is defined as delivery of an item that does not conform to the specifications of the purchase order or contract. Substitutions must be approved by the person who handled the procurement for the CSB. Any substitution may be refused and no substitution should be accepted which is not of equal or greater value than that specified.

Subject 20.240 - Overshipments and Undershipments

CSBs are not obligated to accept overshipments or undershipments. Overshipments that substantially increase the original order quantity should not be accepted since, if the amount of the overshipment had been added to the original quantity, it is often likely that the increased quantity would have resulted in lower pricing.

Subject 20.250 - Loss or Damage in Transit

All deliveries should be promptly inspected at the receiving location for shipping damage.

- Damage that is evident at the time of receipt should be noted on the receiving report or the shipment may be refused.
- Concealed damage should be reported to the carrier and vendor within seven days of receipt and prior to removal of the shipment from the point of delivery. It is difficult to fix responsibility for deliveries once the goods have been moved to another location or when the inspection has not been made in a timely manner.

Sub-Section 20.300 – Handling Default

A vendor is in default when he/she:

- Fails to provide the contracted product or service.
- Does not meet the time schedule specified in the contract.
- Does not provide or perform in the manner specified.

Prior to taking action on the default, the CSB employee in charge of the procurement should consider: (1) the specific reasons for the failure; and (2) the period of time needed to obtain the goods or services from other sources compared to the time delivery or performance could be accomplished by the delinquent contractor.

NOTE: A vendor should not be considered to be in default or charged with excess costs if failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to the fault or negligence of the vendor. The burden of proof rests with the vendor.

Refer to Appendix M of this Manual for sample Cure and Default letters.

The use of the “Default” clause (Appendix E, Section I) allows the CSB to purchase the contracted for goods or services from another source and charge the defaulted contractor with the difference in cost.

(Continued on next page)

The normal procedure for handling a default is:

Step	Action
1	<p>Notify the vendor, verbally (make written note for the file) or in writing (Cure Letter) that:</p> <ul style="list-style-type: none">• He/she is in default of the contract and• If the breach is not corrected within a stated number of days, the contract will be terminated and the vendor held liable for any excess costs incurred by procuring the goods or services from another source (See sample default letter in Appendix M of this Manual).
2	<p>If the default is not corrected within the time specified in the letter the contract is:</p> <ul style="list-style-type: none">• Terminated by reason of default and• Awarded to another source at a fair and reasonable price (usually the next lowest responsive and responsible bidder).
3	<p>The defaulted vendor is notified in writing that:</p> <ul style="list-style-type: none">• He/she is required to pay the difference between his/her price and the new contract price and• His/her firm will be removed from the bidders' list and not allowed to quote on other contracts for that CSB until the difference is paid.
4	<p>If no additional cost results from the default action, the defaulted vendor may be removed from the bidders' list for a specified period of time (Usually 60 days).</p>

Sub-Section 20.400 - Modification of Contract

Contract change provisions may be written into a contract at its inception (See Appendix E - Section I, Clause O-1 and O-2). If however, a fixed-price contract does not contain a changes clause, its cost can be increased no more than twenty-five percent (25%) or \$50,000, whichever is greater, without the advance written approval of the CSB's governing body. This restriction does not restrict the total value of a requirements contract (where a unit cost is agreed upon and the value of the contract depends upon the number of units purchased).

Code of Virginia, Section 2.2-4309

Sub-Section 20.500 - Prompt Payment

Subject 20-510 - Requirement

Prompt payment of bills is required by the Code of Virginia. Prompt payment is considered to be payment by:

- the date which was agreed to under the terms of the contract; or
- if no date was established, it is due:
 - ◊ not more than forty-five (45) days after goods or services are received,
 - OR
 - ◊ not more than forth-five (45) days after the invoice is rendered, whichever is later.

Code of Virginia, Section 2.2-4352 states...

Public bodies must "promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either (i) the date on which payment is due under the terms of the contract for the provision of such goods or services; or (ii) if such date is not established by contract, not more than forty-five days after goods or services are required or not more than forty-five days after the invoice is rendered, whichever is later".

Subject 20-520 - Finance Charge

If prompt payment is not made, the contractor may assess a finance charge against the unpaid portion that does not exceed one percent per month in interest, unless otherwise provided under the terms of the contract.

EXAMPLE: A contract may contain a provision for progress payments.

Subject 20-530 - Payment of Subcontractors

The prompt payment regulation also obligates a contractor to take one of two actions within seven days after receipt of payment from the CSB regarding payment for any work done by subcontractors:

- Pay the subcontractor for the proportionate share of the total payment received from the CSB; or
- Notify the CSB and the subcontractor, in writing, of the contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

Code of Virginia, Sections 2.2-4354

Sub-Section 20.600 - Debarment

An individual or firm may be debarred (removed from the Vendor's List) for up to one (1) year for any of the reasons noted below:

- Breach (default) of contract.
- Stating an unwillingness or inability to honor a binding bid. (A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.)
- Falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation.
- Conferring or offering to confer upon any employee of the CSB who exercises any "official responsibility" for a "procurement transaction", any gift, gratuity, favor, or advantage, present or future that is not available to all employees of the CSB.
- Failing to disclose a condition constituting a conflict of interest by any officer, director, owner or partner of the vendor in a contract or purchase order awarded by the CSB.
- Any cause indicating that the individual or firm is not a responsible vendor.
- A determination by the Executive Director of the CSB that a vendor has used abusive or obscene language or a threatening manner toward CSB personnel during the performance of their duties or as a result of the performance of their duties.

- Sale, under nonemergency conditions, of building materials, supplies or equipment for any building or structure contracted by or for the CSB by a person or independent contractor employed to provide architectural, engineering or design services, but not construction for such building or structure or from any partnership, association or corporation in which the architect or engineer who has provided or is providing the services has a personal interest.

Code of Virginia, Section 2.2-4374

- Consent of the firm or individual being debarred.
- Failure to pay repurchase cost pursuant to a contract termination for default.

An individual or firm may be debarred for up to three (3) years for any of the following reasons:

- Conviction of any criminal offense involving public contracting.
- Court judgment finding a violation of either federal or state antitrust laws.
- Conviction of any offenses indicating a lack of moral or business integrity.

Debarment does not relieve the contractor of responsibility for existing obligations.

NOTE: The above are State guidelines and may be adopted or modified by individual CSBs.

Sub-Section 20.700 - Equipment Maintenance

Warranty - Most new equipment is covered, for a time, by a warranty, Care should be taken to assure that full advantage is taken of warranty provisions prior to contracting for maintenance or repair service.

Insurance - Where equipment is covered by insurance (boilers, machinery, etc.) the insurance carrier should be advised prior to contracting for repair.

Full Service Maintenance - Full service maintenance normally:

- Requires the contractor to provide scheduled maintenance, necessary repair parts, and other service visits as needed at a firm fixed price for a period of time (usually one year).
- Results in higher costs since vendors must include, in their prices for full service maintenance, all contingencies that might occur.
- Should be used only for equipment that requires an unusual amount of service or when "as needed" maintenance and repair is not practical.

As Needed Maintenance - "As needed" maintenance and repair is normally provided on a time and materials cost basis. Solicitations for "as needed" maintenance should require quotations for materials and parts to be either at contractor's invoiced cost or on a percentage discount from manufacturer's published list or catalog prices. ***Cost plus percentage of cost (markup) is prohibited (except in emergency) under the VPPA.***

Code of Virginia, Section 2.2-4331-B

Solicitations for Maintenance Contracts - Solicitations for maintenance contract should include:

- The identity of the equipment to be covered (make, model, style, and quantity of each type of equipment).

- Provisions to add and/or delete equipment during the contract period on a prorated basis.
- The loan of like equipment during extended periods of downtime (if the equipment is critical to the operations of the CSB).
- Requirements that the contractor provide the necessary insurance coverage (see Terms and Conditions in model IFB in Appendix C).

Solicitations for Scheduled Repair/Overhaul - Scheduled repairs and overhauls should be handled on a competitive basis if they are expected to exceed the single quotation limit and, in an emergency, if there is time to obtain quotes.

Competition can be obtained by issuing a two phase IFB (both phases contained and quoted in the same IFB):

Phase	Action
1	Request a lump sum price for disassembly, inspection, and preparation of an estimate. The estimate must include the number of hours and the parts required to complete phase two.
2	<p>Request (1) an hourly labor rate and (2) a percentage of discount from manufacturer's list price for parts. The CSB should include in the IFB (for evaluation purposes):</p> <ul style="list-style-type: none"> • A hypothetical number of man-hours. • A total amount of the list price for parts for <p>The IFB should also contain a cancellation clause in the event that the Phase 2 pricing amounts to more than the CSB wishes to pay.</p>

